D.B. INCOME TAX APPEAL NO.64/2002
(Commissioner of Income Tax Vs.
M/s Hindustan Zinc Ltd.)

Date of order : 14.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa, for the appellant.
Mr. Anjay Kothari, for the respondent.

The appeal relates to assessment year 1982-83 and the following substantial question has been raised for consideration in this appeal :

> "Whether on the fact and in the circumstances of the case the Ld. ITAT was justified in upholding the order of Ld. CIT (A) reducing the disallowance from Rs.1,50,000/0 made by the AO in respect of expenditure on guest house to Rs.17,200/- even though the expenses allowed are not allowable under the specific provision of Section 37(4) and 37(5) of the I.T. Act.?"

Before the assessing authority, the assessee has claimed that the building in question is not a guest house but an accommodation hired as a transit accommodation for employees and Rs. 1,50,298/- were attributable for rent payable for such accommodation while assessing officer had disallowed the entire claim of deduction by the assessee for the expenses incurred on so-called transit accommodation.

On appeal, the CIT (Appeals) restricted the disallowance and allowed the deduction of Rs.1,32,712/- by considering it to be rent paid for hiring the transit accommodation, which cannot be termed as expenses for maintaining the guest-house.

The order of the CIT (Appeals) was affirmed by the Tribunal. For the assessment year 1982-83 separate reasoning was not provided but it followed the decision rendered for the assessment year 1991-92 by the CIT (Appeals) as well as by the Tribunal.

The question is now no more res-integra and has finally been settled by Hon'ble Supreme Court in Britannia Industries Ltd. Vs. Commissioner of Income Tax & Anr., reported in (2005) 278 ITR 546 (SC). The Hon'ble Supreme Court considering the special provisions made for the purpose of disallowing the expenses incurred for the maintenance of guest-house under Section 37 (4) and subsequent amendment in the Section brought into effect retrospectively w.e.f. 1.4.1979, which covers the period in question and also considering the contention that since Section 37 (4) does not operate on the deduction governed by Sections 30 and 36 of the Act of 1961, applied the principle that special provisions enacted excludes the applicability of the general provision and held as under :

> "While the expression "premises and buildings" in sections 30 and 32 of the Income-tax Act, 1961, and the expression "residential accommodation including any accommodation in the nature of guest house" in sub-sections (3), (4) and (5) of section 37 can be similarly interpreted, a distinction has been sought to be introduced for the purpose of section 37 by specifying the nature of building to be a guest house. The intention of the Legislature is clear and unambiguous : the intention was to exclude from deduction the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purpose of a guest house of the nature indicated in sub-section (4) of section 37. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodation used for the purpose of the business or profession, then the Legislature would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in section 37 (5) and the provisions of sections 31 and 32 would have been sufficient for that purpose.
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> When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute."

In view of the aforesaid, it must be held that the Tribunal was in error in allowing the deduction in respect of the rent paid for residential accommodation hired for the purposes of housing the officers on transit.

Accordingly, the appeal is allowed. The order of the Tribunal and CIT (Appeals) relating to the assessment year 1982-83 in regard to allowance of

expenses incurred by way of rent for hiring guest house are set aside and the order passed by the assessing officer is restored.

No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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